



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 74 OF 2011

In the matter of the Estate of KAMWAGIRE KAPINGAZI (Deceased)

JOSEPH MBORA KAMWAGIRE.....APPLICANT

VERSUS

SIMON KINYUA.....RESPONDENT

RULING

This is a ruling on an application dated 7/04/2012 seeking for orders that the court be pleased to order the OCS Manyatta Police Station to provide security during sub-division of NGANDORI/NGUVIO/265. It also seeks for orders that the Land Registrar be ordered to dispense of the original title.

The applicant argues that the grant in this case was confirmed on 10/05/2012 but the respondent has vowed to disrupt the process of sub-dividing the land. He also states that the original title was misplaced and that efforts to trace it have been futile. Consent for sub-division has already been given by the Land Control Board.

The respondent opposed the application on grounds that he was given the land in question by his late father in presence of his mother and brothers. The applicant was not given any land but the respondent has bought for him a plot. The respondent said that he has already sub-divided the land into three portions NGANDORI/NGUVIO/4461, 4462 and 4463. He opposes the application on grounds that the land belongs to him.

I have heard the parties and perused the court file. This case was filed on 28/2/2011 by the applicant. The only asset of the deceased was listed as LR. No. NGANDORI/KIRIGI/265 measuring 2.02 hectares. The copy of official search filed together with the succession cause Form P&A 5 and other standard forms show that the registered proprietor was and still is Kinyua Simon ID 49313/MBU P.O. Box 43, Embu. He was registered proprietor on 27/10/1965 in succession of his deceased father Kamwagire Kapingazi who was the original proprietor.

The respondent's name is Kinyua Smon as it appears on this file and on the title. The deceased in this case is named as Kamwagire Kapingazi. There is no document in this file showing land or any other property in the name of Kamwagire Kapingazi. This is the name of the deceased father of the parties in this application. The respondent Kinyua Simon is the registered proprietor of the land presented in this cause for succession.

At the time the applicant presented the copy of official search, he knew very well that the parcel of land belonged to his brother Kinyua Simon and not the deceased in this case. This was very mischievous of the applicant. He has named himself, the respondent and his 2 other siblings Patrick Njeru and Beth Wanjira

as the beneficiaries.

The court noted that during the hearing of this application and during one mention, the other siblings did not attend court. Probably, the reason is that they know the facts of this succession cause and are not interested in the drama that has come into play.

The grant was confirmed by Ongudi, J on 10/5/2012 in the presence of the petitioner and two others named as Beth and Grace. The petitioner told the court that the respondent was absent because he was sick. I bet this could have been far from the truth. This grant that purports to distribute land of a living person (the respondent) is a fake succession cause, one that never was.

If the applicant wanted to challenge the succession of his late father's land to the respondent, he should have filed a case in court under the relevant provisions but not to file a succession cause and create a circus which has consumed a lot of judicial resources for no meaningful purpose.

The application before the court seeking for security for sub-division of the respondent's land is based on the same fictitious grant. The applicant has really demonstrated dishonesty in the whole saga.

Flipping through this file, I come across another succession cause file No. 368 of 2007 in the estate of the same deceased Kamwangire Kiapingazi which was filed by the applicant two years before this one (No. 74 of 2009). Before directions were given for hearing of a citation brought by the Applicant herein against the respondent, Judge W. Karanja, J. noticed from the documents in the file that the deceased died many years ago and his estate had already been distributed. The citation was dismissed and file ordered closed on 26/2/2009. It is thereafter that the applicant filed this cause.

Considering that this succession cause is based on property of a living person, it follows that the grant issued to the petitioner is null and void for all intentions and purposes.

For these reasons, I find no merit in the application dated 7/4/2012 and it is hereby dismissed with costs to the applicant.

The grant issued to the applicant and confirmed on 10/5/2012 is hereby declared null and void on the motion of this court. This file is hereby closed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF MAY, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Applicant present

Respondent present